

**MEETING AGENDA
MOUNTAIN BROOK CITY COUNCIL**

**CITY COUNCIL CHAMBER (A108)
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

DECEMBER 11, 2023, 7 P.M.

As a matter of convenience, members of the public are invited to listen, observe and participate in public meetings by Internet video conference. Presenters and others interested in a particular matter for discussion are encouraged to attend the meeting in-person. The City is not responsible for technical issues that may occur that interfere with the virtual meeting. The City Council, at its sole discretion, may proceed with its in-person business meeting regardless of whether virtual attendees can hear and/or observe the proceedings. The City intends to make the meeting available by way of the Zoom app (re: Meeting ID 801-559-1126, password 12112023).

1. Approval of the minutes of the November 27, 2023, regular meeting of the City Council.
2. Consideration: Resolution accepting the proposal submitted by Sain Associates for professional traffic engineering services with respect to Mountain Brook Village.
3. Consideration: Resolution authorizes the agreement for consulting services for the drainage study of three proposal Developments in the Watkins Brook Drainage basin in Mountain Brook.
4. Consideration: Resolution executing a contractor agreement with AR Construction for a Public Works Equipment Shed.
5. Consideration: Resolution authorizing the sale or disposal of certain surplus property.
6. Consideration: Resolution executing an elevator Service and Repair Order with Otis Elevator Company for the O'Neal Library.
7. Comments from residents and attendees.
8. Announcement: The next regular meeting of the City Council is January 8, 2023 at 7:00 p.m.
9. Adjourn.

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING DISCUSSION
NOVEMBER 27, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 3 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met informally in-person at 5:45 p.m. on the 27th day of November, 2023 (others were allowed to listen to the meeting by way of Internet video conference-there were 3 attendees). Council President Smith called the pre-meeting to order and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Graham L. Smith
Lloyd C. Shelton
Gerald A. Garner
Stewart Welch III, Mayor

Absent:

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

1. AGENDA

1. Preliminary discussion of proposed PUD rezoning case (P-23-18) at 2900 Cahaba Road

Dana Hazen-Director of Planning, Building, and Sustainability

- This is currently zoned local business
- The village master plan does call for pedestrian connection
- The PUD as proposed is not perfectly aligned with the land use plan but it does align with the overall master plan goals
- Subject site is located in area governed by the village overlay but the map excludes the subject site from the requirements of the village overlay saying it is governed by base zone districts only
- Project Scope: There are 166 residential units proposed (102 independent living units, 32 assisted living units, and 32 memory care units)
- There are 3,4, and 5 story components
- Primary access to site is Cahaba Road
- The base zoning district Residence G allows 12 units per floor per acre, the proposed density is 8.37 units per floor per acre
- Parking: Residence G requires 2 spaces per dwelling unit, the proposed PUD would be required to have 332 and 38 visitor spaces based on that formula
- There are 167 parking spaces proposed on site for use by residents, staff, and visitors
- The Board of Landscape Design asked the applicant to provide an existing tree survey (this will be forthcoming)
- The applicant has worked with the Fire Marshall

Lee Rhudy-Fire Marshall

- Met twice with the applicant, had 16 concerns and all 16 concerns have been met verbally by the applicant

Dana Hazen

- Traffic study-the levels of service for both existing and projected appear to be above acceptable range in the morning and afternoon peaks

Lloyd Shelton-Council Member

- Inquired if the traffic study contemplates two new roundabouts and the new development on Shade Valley property

Scott Skipper-Skipper Consultants

- The counts were done for what is there today
- Did not project for the future because this development would be completed before the other property is complete

Dana Hazen

- The proposed PUD would have a commencement date of June of 2024 to be completed in 20-24 months

2. Contract for painted brick crosswalks in English Village

Ronnie Vaughn-Public Works Director

- This is a budgeted item; however, this came back \$17,000 over budget
- This is for 6 crosswalks in total (4 on Cahaba Road and 2 on the side street on 20th Avenue)
- To be completed around spring of 2024

Virginia Smith-Council President

- Item added to the formal agenda (Resolution No. 2023-197)

3. Review of the other matters to be considered at the formal (7:00p.m.) meeting

2. EXECUTIVE SESSION AND ADJOURNMENT

Council President Pro Tempore made a motion that the City Council convenes in executive session to discuss matters of litigation and that the City Council shall reconvene upon conclusion of the executive session to the regular council meeting. The City Attorney certified that the subject matters were allowed to be discussed in executive pursuant to Alabama Law. The motion was seconded by Council President Virginia Smith. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes:	Virginia C. Smith
	William S. Pritchard III
	Graham L. Smith
	Lloyd C. Shelton
	Gerald A. Garner

Nays:	None
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There being no further matters for discussion Council President Virginia Smith adjourned the pre-meeting at approximately 6:29 pm.

3. CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, certify the above is a true and correct synopsis of the discussion from the regular session of the City Council of the City of Mountain Brook, Alabama held at City Hall, Pre-Council Room (A-106) on November 27, 2023, and that the meeting was duly called and held in all respects in accordance with the laws of the State of Alabama and bylaws of the City and that no formal action or votes were conducted at said work session.

City Clerk, Approved by
City Council December 11, 2023

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF MOUNTAIN BROOK
NOVEMBER 27, 2023**

[As a convenience, members of the public were invited to listen and observe in the public meeting by Internet video conference. There were 4 virtual attendees at the meeting.]

The City Council of the City of Mountain Brook, Alabama met in person at 7:02 p.m. on the 27th day of November, 2023 (others were allowed to listen to the meeting by way of Internet video conference-there were 4 attendees). Council President Virginia Smith called the meeting to order, and the roll was called with the following results:

Present: Virginia C. Smith, Council President
William S. Pritchard III, Council President Pro Tempore
Graham L. Smith
Lloyd C. Shelton
Gerald A. Garner
Stewart Welch III, Mayor

Absent:

Also present were City Attorney Whit Colvin, City Manager Sam Gaston, and City Clerk Heather Richards.

The Council President Virginia Smith stated that a quorum was present and that the meeting was open for the transaction of business

1. CONSENT AGENDA

Council President Virginia Smith announced that the following matters will be considered at one time on the consent agenda provided no one in attendance objects:

Approval of the minutes of the November 9, 2023, special meeting of the City Council
Approval of the minutes of the November 13, 2023, regular meeting of the City Council

2023-195	Accept the proposal with PRI Management for the Police Department's inventory and purge of records	Exhibit 1, Appendix 1
2023-197	Execute a contractor agreement with Acron LLC for the Pedestrian Brick Pattern Brick Pattern Crosswalk in English Village (2000 Cahaba Road)	Exhibit 2, Appendix 2

Thereupon, the foregoing minutes and resolutions (Nos. 2023-195 and 2023-197), were introduced by Council President Virginia Smith and a motion for their immediate adoption made by Council Member Shelton. The minutes and resolutions were then considered by the City Council. Council Member Graham Smith seconded the motion to adopt the foregoing minutes and resolutions. Then, upon the question being put and the roll called, the vote was recorded as follows:

Ayes: Virginia C. Smith
William S. Pritchard III
Graham L. Smith
Lloyd C. Shelton

Gerald A. Garner

Nays: None

Abstained: None

Council President Virginia Smith thereupon declared that said minutes and resolutions (Nos. 2023-195 and 2023-197) were adopted by a vote of 5—0 and as evidence thereof he signed the same.

2. DIRECTOR OF STUDENT SERVICES TO ADDRESS COUNCIL

Amanda Hood-Mountain Brook Director of Student Services

- Would like to offer a local crisis line to the community
- Found the National Crisis Hotline is widely being utilized during the times of 10:00am and 1:00am and wait times can exceed 45 minutes
- Would like to provide another opportunity for every member of the community
- The same company that offers Gaggle, has a new program called Reach Out that provides local crisis lines to local communities
- This is a live monitored 24/7 crisis line supported by trained crisis counselors
- A person can reach out via call, text or web chat
- Goal is to propose a partnership with AllIn Mountain Brook, Mountain Brook Schools and the City of Mountain Brook
- The total cost is structured based on the number of students in the school system (\$1.75 per student per year for 3 years)
- Mountain Brook has over 4,400 students
- The total annual cost would be \$8,500

Virginia Smith-Council President

- The council is in support of this program

3. THE BOARD OF LANDSCAPE DESIGN PRESENTING THE 29TH YEAR TREE USA AND THE 21ST GROWTH AWARD TO THE CITY OF MOUNTAIN BROOK

Katie Wiswall-Alabama Forestry Commission

- Presented the 29th year tree USA and the 21st growth award to the City of Mountain Brook

4. CONSIDERATION OF RESOLUTION (NO. 2023-196) APPROVING THE CONDITIONAL USE APPLICATION AT 2701 CAHABA ROAD (EXHIBIT 3, APPENDIX 3)

Dana Hazen-Director of Planning, Building, and Sustainability

- The conditional use is for an office use on the 2nd floor in the previous Barton Clay building
- There is an opportunity for 5 offices plus a reception desk
- The employees will not be full time, the primary office is located downtown

Virginia Smith-Council President

- Inquired if the conditional use will come back if it is sold or if they have to add more offices

Dana Hazen

- If the company decides to grow or they sell the property, it would have to come back before the council for approval

Billy Pritchard-Council President Pro Tempore

- With the proposed limited office use on this application, is in favor of what is proposed

Council Member Graham Smith made a motion to approve Resolution 2023-196 approving the conditional use application at 2701 Cahaba Road. The motion was seconded by Council President Virginia Smith. Thereupon, Council President Virginia Smith called for a vote with the following results:

Ayes: Virginia C. Smith
William S. ("Billy") Pritchard III
Lloyd C. Shelton
Graham L. Smith
Gerald A. Garner

Nays: None

Council President Virginia Smith declared Resolution (No. 2023-196) is hereby passed by a vote of 5-0 (Exhibit 3)

5. PUBLIC HEARING: REQUEST TO REZONE PROPERTY FROM LOCAL BUSINESS DISTRICT TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT FOR A SENIOR LIVING FACILITY 2900 CAHABA ROAD MTB OFFICE PARK, LLC (CASE P-23-18)

Charlie Beavers-Attorney for applicant

- This property is under an 85 year lease with the LAD family to the applicant
- (Introduced team to present at the public hearing)

Al Worthington

- Studies have shown that a senior, living in a senior housing, lives 7 years longer
- This is because they are receiving 3 meals a day, are more active, and are more social
- Developed a luxury senior housing community that consists of 65% independent living, 15% assisted living and 15% memory care
- As needs change, they are able to move to different unit within the same building
- Will offer 3 dining venues (white table cloth fine dining, casual, and bistro)
- Will offer spa services, fitness center, indoor pool, therapy and massage, library, theater room, and outdoor activities
- Plan to operate like a 5-star hotel with 24/7 concierge service

Louis Nequette-Nequette Architecture and Design 2227 2nd Avenue North Birmingham

- Asked to help guide the exterior character of the project to keep within the vision of the village

Nathan Roseman-Roseman Associate Architects 730 Peachtree Street S.E. Atlanta Georgia

- There will be 123 parking stalls in the parking garage then additional 44 surface parking spots (total 167)
- The first floor contains the main area, dining room, kitchen, wellness facilities, and assisted living units
- The second floor contains assisted living units and independent living units
- The third floor contains independent living units and memory care
- The fourth floor contains memory care, assisted living, and independent care
- Some trees on the property will remain
- The building is not parallel to Cahaba so the setback grows

- The building is setback 87' from Cahaba on the southside
- The limits of construction shows the line that will not be crossed when doing erosion or utilities (any trees within the limits of construction will be lost)
- There is a portion of the property that they are still investigating ways to save the trees

Sam Sampson-Ironwood Design Group-426 South Atlanta Street Roswell Georgia

- Likes to provide a lot of shade for the residents
- Preference is to use shade canopy from trees (flowering trees, deciduous trees, etc)
- As the site is designed more, will be able to refine the plan
- Preference is to save trees where they can
- Where there is an impact on existing trees, will replant to re-naturalize with the existing vegetation

Virginia Smith-Council President

- Inquired about the retaining wall versus slope on the back of the property

Sam Sampson

- Currently it is shown as being graded out
- Working with adjacent property owner to grade the site out at a steeper slope that would eliminate the retaining wall at the low end
- This would impact more trees but they would re-naturalize and replant with additional hardwood mix similar to what is there currently

Dana Hazen-Director of Planning, Building and Sustainability

- Inquired as to what species of trees are along Cahaba Road

Sam Sampson

- There is a variety (Oak, Pine, Hickory)
- Would try to replace any trees with as similar trees as possible
- On the tree survey, it only shows the larger trees
- There are a lot of smaller trees on the property that does not show up on the tree survey

Ben Watson-Live Oak Engineering 2509 7th Avenue South Birmingham

- Currently with the existing building there are approximately 2.7 acres that is impervious
- The new plan is 3.7 acres (that is adding an acre of impervious area)
- This is addressed by water falling off property in 3 locations 1) An existing headwall in the northwest corner 2) an acre will run along Cahaba 3) most of the developed area will drain into a closed storm system down headed towards Culver
- Intent is to directly match pre and post impervious areas on the two outside areas
- Velocity of water will be similar
- The added increase in storm water runoff initially would be to put a closed chamber system under the carpark
- This development will not affect flooding downstream negatively
- Utilities-there is an existing sewer main that runs up existing road
- Will run a new sewer main to car park
- Will have more than adequate fire protection

Scott Skipper-Skipper Consulting

- The purpose of the traffic study was to look at what is happening today from traffic operations standpoint
- The traffic study count was as of April 2023

- The current traffic conditions are operating at a C or better
- Looked at the traffic this would generate, found the post development traffic operations are very similar to current conditions
- A senior living facility is usually not heavy traffic generators
- Post development conditions very similar to current conditions

Billy Pritchard-Council President Pro Tempore

- Inquired how the numbers were generated for the senior housing use

Scott Skipper

- It came from a national average
- Used nursing home because that is what is most closely related to memory care because there is not a “memory care” land use

Lloyd Shelton-Council Member

- Inquired about future development being taken into consideration in the study

Scott Skipper

- Did not take out existing office traffic
- Did not take into account any future development beyond the scope of when this project would occur

Virginia Smith

- Inquired if there is any need to reconfigure the traffic light

Scott Skipper

- Would suggest at looking at the timing of the traffic light post development (if need be)

Charlie Beavers

- The team has determined that there is a tremendous need for something like this in Mountain Brook
- Thinks this is the perfect site because it is a closed site

Graham Smith-Council Member

- Inquired if there was any discussion to reduce the height of the building

Charlie Beavers

- For this project to work and to justify the cost, there needs to be a certain numbers of units
- The 5-story portion is up against Office Park, the 4-story portion is towards the village and Cahaba
- The building is set significantly off the road

Lloyd Shelton

- Inquired as to any provision for residents in the independent living units to access the village

Al Worthington

- There is a sidewalk that runs down the drive to the redlight (the hill is a 12% grade)
- In addition to those that can walk, there will be daily transportation that will take the residents wherever they need to go

Brandon Plowden-2844 Overton Road (Chairman of the Board of Landscape Design)

- Inquired as to when the survey will be available

- Concerned with canopy that is there today
- Inquired if there can be some requirements regarding trees such as 1) if a tree dies in a couple of years, it will be replaced 2) if a certain larger caliber tree is taken out, what size caliber can they expect it to be replaced with
- Inquired as to when will the decision be made regarding the retaining wall in the back and how it will affect the trees, vegetation, and drainage

Virginia Smith

- Inquired as to when the tree survey will be available

Ben Watson

- The tree survey has every tree on the property it does not have trees on the right-of-way

Brandon Plowden

- Would like to have a good understanding what is there today and realistically what will have to be removed for the building

Victor Hanson-2328 Chester Road

- Have not heard any steps to address Charlie Perry's concerns regarding the traffic study (Appendix 4)

Billy Pritchard

- Will take steps to address those concerns

Victor Hanson

- The heaviest traffic times are between 11:00am and 3:00pm (not during the morning and afternoons)
- Thinks the traffic measurements should be actual measurements and not standard measurements

Chris Mullins-Mountain Brook Fire Chief

- One main point for the fire department is access to the parking garage so they can get patients from the upper floor to the basement
- Have not received confirmation that they will have access to the parking garage

Virginia Smith

(Closed the public hearing)

6. COMMENTS FROM RESIDENCES AND ATTENDEES

(There were no public comments)

7. ANNOUNCEMENT

Council President Virginia Smith announced the next regular meeting of the City Council is December 11, 2023, 7:00p.m.

8. ADJOURNMENT

There being no further business to come before the City Council, Council President Virginia Smith adjourned the meeting at approximately 8:32 p.m.

9. CERTIFICATION

RESOLUTION NO. 2023-198

BE IT RESOLVED by the City Council of the City of Mountain Brook that the City Council hereby accepts the proposal submitted by Sain Associates, in the form as attached hereto as Exhibit A, with respect to professional traffic engineering services for the Mountain Brook Village.

ADOPTED: This 11th day of December, 2023.

Council President

APPROVED: This 11th day of December, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its regular meeting held on December 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk



December 5, 2023

Sam S. Gaston
City Manager
56 Church Street
PO Box 130009
Mountain Brook, AL 35213

SUBJECT: Mountain Brook Village Traffic Review
Scope and Fee
Mountain Brook, AL

Dear Sam:

We appreciate the opportunity to submit our firm's proposal for professional traffic engineering services for your project. Following is a description of our understanding of your project and the scope of services that we propose to undertake.

Scope of Services

Sain Associates will review three potential developments near Mountain Brook Village and determine their impact on the proposed roundabouts on Cahaba Road. Mountain Brook will provide the traffic impact studies from the three developments. We will compare previously completed traffic projections to the projected trip generation from the three potential developments. If any deficiencies are noted, we will make recommendations to mitigate those.

We will summarize our findings into a draft memorandum for review and preliminary planning purposes. After we address any comments you may have, we will seal and finalize the memorandum. We will attend the city council meetings on January 8, 2024 to present these findings.

Exclusions

- Conceptual plan of proposed improvements
- Surveying/design plans for recommended roadway improvements
- Construction cost estimate for recommended improvements

If any of these services become necessary as the project progresses, we can prepare an amendment to this work authorization to perform additional services, with your authorization.

Fee:

We propose to provide the above-described services for the following fee:

Traffic Review Lump Sum \$4,500

Reimbursable expenses such as printing, shipping, mileage, etc. are included in the above fees.

Schedule:

We are available to begin work immediately upon receipt of a signed contract. We anticipate completing the memorandum by January 3, 2024 for distribution to council members.

Terms and Conditions

This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of service specified will be performed on a time and materials basis according to the schedule of rates enclosed. Any modification to this contract document must be approved in writing by both parties with approval indicated by each signatory's initials and the date of approval.

Procedures for Changes in Scope of Work

The scope of work documented herein is based upon information known as of the date of this proposal. Should future changes (e.g. site plan, regulatory, project phasing, additional meetings, etc.) necessitate changes in the scope of work, we will contact you to discuss the scope of the additional work and its impact to our contracted fees and project schedule. No additional work will be undertaken by Sain or our subconsultants without your authorization.

Proposal Limitations

We reserve the right to withdraw or modify this proposal if not contracted within 60 days.

Sain Associates has provided this proposal with the understanding that you have selected our firm to perform professional services based upon our staff's qualifications, experience and reputation and not solely upon the cost of the services proposed. We trust the fees outlined herein are acceptable and within your project budgetary plans. We look forward to commencement of the work and will be glad to address any questions or concerns you have regarding the technical scope and/or schedule of fees for this proposal. If you should request additional prices for the scope of work included herein from other consulting engineers and/or land surveyors, please consider our proposal withdrawn in order to comply with Alabama Administrative Code Chapter 330-X-14-.05(f).

Thank you for the opportunity to provide this proposal. If you have any questions or need clarification on any item, please call me. We look forward to working with you.

Sincerely,
SAIN ASSOCIATES, INC.



Charles Cochran, P.E., PTOE, RSP
Project Manager
AL P.E. # 36282

OFFERED: SAIN ASSOCIATES, INC.
BY: Becky White, PTP
Sr. Principal/COO



Signature of Authorized Representative

Date: December 5, 2023

ACCEPTED: CITY OF MOUNTAIN BROOK

BY: _____

Signature of Authorized Representative

Print Name & Title

Date: _____

SAIN ASSOCIATES, INC.

TERMS AND CONDITIONS

Rates:

Principal	\$210.00 - \$300.00 per Hour
Engineer/Planner	\$105.00 - \$160.00 per Hour
Senior Engineer.....	\$165.00 - \$230.00 per Hour
GIS Professional.....	\$130.00 - \$150.00 per Hour
Designer.....	\$95.00 - \$140.00 per Hour
Surveyor	\$110.00 - \$155.00 per Hour
Survey Crew (1-Person).....	\$110.00 per Hour
Survey Crew (1-Person + Robot)	\$165.00 per Hour
Survey Crew (2-Person).....	\$190.00 per Hour
Survey Crew (3-Person).....	\$240.00 per Hour
Survey Per Diem	\$170.00 per person per Night
Administrative Support	\$65.00 - \$98.00 per Hour

Reimbursable Expenses

Printing, contract carrier service, and travel expenses are ~~not~~ included within Consultant's basic fee ~~and will be passed along to Client at cost plus 10%.~~

Payment

Payment for services by Consultant is to be made monthly based upon the percentage of work completed and invoiced to Client. Client's obligation to pay for services rendered hereunder is in no way dependent upon its ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon Client's successful completion of the project. Payment for services and expenses hereunder is due in full within thirty (30) days after receipt of invoice. For past due accounts in excess of 120 days Consultant will issue a past due statement with interest of 1½% per month from said thirtieth (30th) day. Consultant may elect to seek assistance in collection of accounts in excess of 120 days in which case Client will be billed for attorney's fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. Consultant reserves the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

Standard of Care

The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the skill and care ordinarily provided by members of Consultant's profession practicing under the same or similar circumstances and professional licenses at the same time and in the same locality, as expeditiously as is prudent considering the ordinary professional skill and care of a competent member of Consultant's profession. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

Responsibility of the Client

Client shall provide all criteria and full information as to Client's requirements for the Project, including budgetary limitations.

Reliance on Information Provided by Others

Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's Consultants and Contractors, and information from public records, without the need for independent verification.

Schedules, Budgets and Estimates or Opinions of Cost

Any schedules or completion dates, budgets, or estimates of cost prepared by Consultant represent Consultant's professional judgment based on its experience and available information. Since neither Consultant nor Client has control over: the cost of labor, materials, or equipment, or contractor's methods of determining prices; competitive bidding or market conditions; utility conflicts or right-of-way acquisition; agency approval times or actions of a Consultant Program Manager not employed by Sain, the Consultant cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets or estimates of cost prepared by Consultant or proposed, established, or approved by Client.

Approvals

Client agrees and acknowledges that the approval process necessary to maintain a project timeline is both unpredictable and outside of the Consultant's control. Consequently, the Consultant makes no representations as to its ability to timely achieve or to obtain said permits or approvals from any governing authority or outside agency.

Site Visits/Jobsite Safety/Construction Phase Services

Consultant and Client acknowledge and agree that the Consultant shall not have responsibility and will not be liable for jobsite safety or construction means and methods, regardless of whether Consultant's scope of services documented herein include site visits during the construction phase. The Consultant is not responsible for, and shall by no means be liable for, the acts or omissions of any owner, contractor, subcontractor or material supplier.

Right of Entry

Client, at its sole cost and expense, shall furnish the Consultant, its agents, employees, and subcontractors a right-of-entry and any other authorizations or licenses needed for Consultant to enter the Project location to perform the services contemplated by this Agreement. Client agrees and acknowledges that the services provided by the Consultant may require certain activities that may disrupt the use of the Project's property location and may disturb, alter, or damage the terrain and vegetation thereabout and that Consultant will not restore the property to its original state.

Certifications

Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain or verify. Further, Consultant and Client acknowledge and agree that Consultant shall not be expected to provide any certifications unless expressly agreed upon by Consultant, as evidenced in writing within the scope of Consultant's work invoiced to Client.



SAIN ASSOCIATES, INC.

TERMS AND CONDITIONS

Unforeseen Conditions and Occurrences

If, during the course of performance of services pursuant to this Agreement, any unforeseen hazardous substance, material, object, element, or other unforeseen conditions or occurrences are encountered which, in the Consultant's judgment, materially affects or may affect the services to be provided hereunder, the risk involved in providing the services, or the scope of the services, Consultant will notify Client. Subsequent to that notification, Consultant may: (a) if practicable, in Consultant's judgment and with Client's approval, complete the original scope of services in accordance with this Agreement; (b) agree with Client to modify the scope of services and the estimate of costs to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the Parties and incorporated herein; or (c) terminate the services effective on the date of notification for convenience.

Use of Electronic Media

Copies of documents that may be relied upon by the Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Consultant. Files in electronic media format or text, data, graphic or other types that are furnished by Consultant to Client are only for convenience of the Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application, operating systems or computer hardware differing from those in use by Consultant at the beginning of this assignment.

Limitation of Remedies

Liability of remedies of Sain Associates, Inc. resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.

Consultant's Choice of Arbitration or Court

Client and Consultant agree that if a dispute arises out of or relates to this Agreement, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation shall take place in Jefferson County, Alabama, and if a mediator cannot be agreed upon by parties, then it is agreed that AAA (American Arbitration Association) will appoint a mediator. If mediation is unsuccessful, any such dispute shall be subject to and resolved at the election of Consultant, by either arbitration in accordance with the Rules of the AAA or by a trial by judge in either the Circuit Court for Jefferson County, Alabama, or the United States District Court for the Northern District of Alabama.

Indemnification

Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

Termination of Contract

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

Ownership of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or Client's disclosure of any such documents to any third party.

Third Parties

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Consultant. Consultant's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Consultant because of this Agreement or Consultant's performance of services hereunder.

Consequential Damages Waiver

Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

Conflicting or Inconsistent Terms/Severability

In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any provision of this Agreement which is held to be void or unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions.

Schedule 2023



RESOLUTION NO. 2023-199

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby authorizes the agreement for consulting services, attached hereto as Exhibit A, between the City and Schoel Engineering Company, Inc. for consulting services associated with a comprehensive drainage study of three proposal Developments in the Watkins Brook Drainage basin in Mountain Brook.

ADOPTED: This 11th day of December, 2023.

Council President

APPROVED: This 11th day of December, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 11, 2023, as same appears in the minutes or record of said meeting.

City Clerk

Agreement for Consulting Services

Comprehensive Drainage Review of Three Proposed Developments In the Watkins Brook Drainage Basin

December 07, 2023

This **AGREEMENT**, entered into by and between **The City of Mountain Brook, Alabama**, hereinafter referred to as the **Client**, and **Schoel Engineering Company, Inc.**, hereinafter referred to as the **Consultant**, is for Consulting Services associated with a comprehensive drainage study of three proposed Developments in the Watkins Brook Drainage basin in Mountain Brook, Alabama.

PROJECT OVERVIEW

Developments are proposed on the Village Dermatology site on Cahaba Road, the Shades Mountain Presbyterian site, and on Heathermoor Road. All of these projects are in the Watkins Brook Basin. In this work, the drainage impacts of the projects will be studied in a comprehensive manner. The potential impacts of the proposed projects on local drainage conditions as well as on the Watkins Brook basin as a whole will be examined. A brief report will be prepared and any recommendations or requirements will be detailed in the report.

PROPOSED SCOPE & SERVICES

1. Assemblage of existing information into a project base map

The Consultant has materials on all three sites that was developed in earlier work performed for the City. The materials will be assembled and merged into a base map generally derived from the base map for the previous Watkins Brook drainage project. The detailed scope is as follows:

- Coordinate as required with Client
- Locate information from previous work
- Assemble materials (topography and boundary information) into the Watkins Brook base map
- Review base with Client

Lump Sum Fee \$ 3,520

2. Review of drainage plans and modeling of potential impacts

The Consultant would review the drainage and development plans of the three proposed projects. This review would evaluate the potential impacts on local drainage conditions and also evaluate the potential impacts on flooding in Watkins Brook and tributary streams. The detailed scope is as follows:

- Obtain development plans for the Surgical Dermatology site
- Review drainage report(s)
- Evaluate the impact of the Heathermoor site (the Ansell) on the Floodplan/Floodway of Watkins Brook
- Assess impacts of Surgical Dermatology site on local drainage conditions and on Watkins Brook
- Model the developments as appropriate in the Watkins Brook model

Lump Sum Fee \$11,700

3. Development of recommendations and brief report

The Consultant would develop recommendations for the three projects. These recommendations may or may not be consistent with the proposed development schemes. A report on the likely impacts of the projects would be prepared and presented to the City. The detailed scope is as follows:

- Develop drainage recommendations or development recommendation for the three projects
- Prepare brief report on the study findings
- Submit to City and present findings in a presentation

Lump Sum Fee \$ 4,500

NOT INCLUDED IN SCOPE OF WORK

1. Any Civil Design
2. Studies of projects not mentioned above
3. Surveying of any type

If additional services not included in the above scope are performed, those additional services should be approved by Client in advance and may be billed according to the attached Schedule of Unit Rates.

PAYMENT TERMS

The Consultant will bill the Client monthly based on work completed during the billing period. Work completed will be based upon a percentage of completion for Lump Sum Fees, and will be based on time and materials at the attached schedule of unit rates for Hourly Estimates and Not to Exceed agreements. Payments are due within thirty (30) days of invoice date. The Client's obligation to pay for services is in no way dependent upon the Client's ability to obtain financing, obtain approval from any governmental or regulatory agencies, real estate closing, receipt of payment from other parties or upon successful completion of the project. If payment is not received within thirty (30) days from date of invoice, the amounts may include a late charge of 1½ % per month, calculated from said thirtieth (30th) day. Should Consultant incur attorney's fees for collection of payment, the amount owed to Consultant shall include any and all said fees. Failure to make payment within sixty (60) days shall constitute a waiver of the right to dispute the accuracy and appropriateness of the invoice. In addition, Consultant reserves the right to suspend services under this Agreement until such time as payment is made in full for all amounts due for services rendered and expenses incurred has been received.

SCHEDULE OF UNIT RATES – EFFECTIVE THROUGH 12/31/2024

Senior Principal	\$ 350.00 per hour
Principal	\$ 230.00 per hour
Department Manager/Chief Land Surveyor	\$ 210.00 per hour
Survey Field Crew	\$ 205.00 per hour
Senior Project Manager	\$ 200.00 per hour
Project Manager	\$ 185.00 per hour
Senior Professional	\$ 175.00 per hour
Construction Administration Manager	\$ 150.00 per hour
Project Professional	\$ 140.00 per hour
Staff Professional	\$ 130.00 per hour
Senior Designer / Drafter / Specialist	\$ 130.00 per hour
Designer 2 / Drafter 2 / Specialist 2	\$ 120.00 per hour
Designer 1 / Drafter 1 / Specialist 1	\$ 105.00 per hour
Administrative / Technical Support	\$ 95.00 per hour

Printing and other reimbursable expenses will be charged at cost plus 15% and are not included in the fee basis described above. Lodging and Meals and Incidentals (M&IE) will be billed according to Government Services Administration (GSA) rates. Sub-consultant invoices billed as reimbursables will be invoiced to the client at a rate of 115% of the invoice amount.

GENERAL TERMS AND CONDITIONS

1) Services performed under this Agreement will be conducted in a manner consistent with that level of care and skill exercised by members of the profession currently practicing under similar conditions. Plans, specifications, and submittals will be prepared in accordance with the written standards of the governing authorities having jurisdiction. Any extraordinary requirements for approvals will be considered additional services. Except as expressed herein, no other warranty, expressed or implied, is made. Nothing in this agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

2) Consultant agrees that, to the fullest extent permitted by law, it will defend, indemnify, reimburse and hold Client harmless from the expenses (including those for attorneys' fees, litigation costs and court expenses), damages (including those for bodily injury, death or damage to Clients' property or that owned by third parties) and losses that Client might incur that arise from the following types of claims, causes, suits or actions relating to the Project, the Project site, or Consultant's breach of its obligations under this Agreement (collectively, "Claims"):

(a) professional liability Claims by the Client against the Consultant to the extent caused by Consultant's negligent performance of its professional services contemplated hereunder (a "Professional Liability Claim"); provided that (i) Consultant's total liability for a Professional Liability Claim (including, but not limited to, those arising from its negligence, errors and omissions, or those alleging strict liability, breach of contract or breach of warranty) shall not exceed the minimum limits of the Consultant's Professional Liability insurance coverage required herein in subpart 7(a) below; and (ii) nothing in this provision obligates Consultant to indemnify Client from a Professional Liability Claims resulting from Client's negligence or willful misconduct;

(b) any Claims for bodily injury, death, or property damage by third parties against the Client that arise out of any "occurrence" as that term is defined by Consultant's policy of Commercial General Liability insurance required in section 7(b) below, provided that (i) Consultant's total liability under this provision shall not exceed the amount of the minimum limits of the Comprehensive General Liability policy required in subpart 7(b) below; and (b) nothing in this provision shall obligate Consultant to indemnify the Client for Claims by third parties that result from the sole negligence or the willful misconduct of the Client. Nothing herein is intended or shall be interpreted to demand or require Consultant to defend or indemnify the Client from and against any third-party claims, demands, actions, proceedings or suits alleging or in any way arising out of Consultant's breach of its professional services obligations or warranty hereunder, except to the extent provided for in subsection (a) above.

3) The fees for different phases of Services in this Agreement are based on the Scope of Services herein. If the above outlined Scope of Services is changed, or if there are other services that may be requested by the Client, these additional services will be performed at the above hourly rates, or at a revised fee that the parties will negotiate to their mutual satisfaction. If construction of the Project is delayed and completed more than six (6) months following the anticipated completion date set forth herein, the Consultant reserves the right to adjust its Hourly rates for inflation costs on a one-year interval from the date of this proposal.

4) If a claim, dispute, and other controversy arises between Consultant and Client concerning this Agreement or the alleged failure to perform their respective responsibilities hereunder (a "Dispute"), the respective Project Representatives for the Parties will use good faith efforts to amicably resolve such Dispute. If the Dispute is not resolved by the Project Representatives, it will be escalated to the senior official or manager level of each party for consideration. If a Dispute other than as a result of Client's failure to pay amounts undisputedly due hereunder is not resolved at the senior level, it will be submitted to mediation before, and as a condition precedent to, either party availing themselves of remedies provided by law. Mediation shall be held in the county where the Project is located, and if the parties cannot agree on a mediator, then one shall be appointed by the American Arbitration Association (AAA). The parties agree to equally split the cost billed by the mediator.

5) Services not expressly set forth in writing as basic or additional services and listed in the proposal to this Agreement are excluded from the scope of the Consultant's Services, and the Consultant assumes no duty to the Client to perform them unless agreed in a subsequent writing.

6) Client, at its expense, will provide the Consultant with all required site information, existing plans, reports, studies, project schedules and similar information that is contained in Client's files. The Consultant may rely on the information provided by the Client without verification. The Client shall participate with the Consultant by providing all information and criteria in a timely manner, review documents and make decisions on project alternatives to the extent necessary to allow the Consultant to perform the Scope of Services within established schedules.

7) Consultant's Insurance. For the duration of the Project and the Agreement and for limits not less than stated below, Consultant, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to Client:

(a) Professional Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00) covering claims to the extent caused by Consultant's negligent performance of professional services or breach of professional warranty. This Professional Liability policy shall include coverage on an occurrence basis.

(b) Comprehensive General Liability with minimum limits of not less than One Million Dollars (\$1,000,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage on an occurrence basis for premises/operations, products/completed operations, assumed contractual obligations, and independent contractors; and

(c) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

Consultant may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before commencement of any Services, the Consultant shall provide Client a certificate(s) of insurance evidencing compliance with the requirements in this section. Further, through an endorsement,, Client shall be named an additional insured on the Comprehensive General Liability and any applicable umbrella and excess policies

8) All reports, plans, documents, materials created by Consultant or its work product from its Services (collectively, the "**Instruments of Service**") shall remain the property of the Consultant, and are intended solely for uses related to this Agreement and construction of the Project. Notwithstanding, Consultant grants Client a perpetual license to distribute to any third party, reproduce or otherwise use any of the Instruments of Service for purposes it deems reasonably necessary that relate to construction of the Project or conditions at the Project site. Client agrees and acknowledges any reuse of the Instruments of Service for purposes outside of this Agreement or the Project, or any failure to follow Consultant's recommendations in those Instruments without Consultant's written permission, shall be at the Client's and other user's sole risk.

9) This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure to perform in accordance with its terms by the other party through no fault of the terminating party. If this Agreement is terminated by Consultant due to default of Client, it agrees that Consultant shall be paid for total charges for work performed prior to the termination notice date.

Additionally, at Client's convenience and without cause or default by Consultant, Client may suspend or cancel the Agreement, performance of Services or work on the Project at any time by providing written notice to Consultant. In the event of such suspension or cancelation, Client will compensate Consultant for Services performed up to through the date of that notice.

10) Delayed Performance/Force Majeure Events. Neither party to this Agreement shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under it during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed party must promptly provide the other with written notice of the Force Majeure Event, the delayed party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed party.

11) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

12) Consultant shall not be responsible for construction safety or construction procedures at the Project site, nor will it be responsible for the quality of the work performed by the Contractor or any consultants that are not retained by it.

13) At Client's request and for its convenience, Consultant may provide documents and its work product in electronic format. Data, words, graphical representations, and drawings that are stored on electronic media or which are transmitted electronically, may be subject to uncontrollable alteration. The printed, signed and sealed hard copy is the actual professional Instrument of Service. In the event of a discrepancy between the electronic document and the hardcopy document, the hardcopy document will prevail.

14) This Agreement is entered with the expectation that it is not being used in a price comparison with other firms. Alabama law prohibits licensed engineers and land surveyors from participating in any process that solicits prices from two or more licensed engineers or land surveyors simultaneously. The law defines

this practice as bidding and participation by a licensee is prohibited. If this agreement is being used in this manner, we must by law, withdraw this agreement from consideration.

15) Limitation of Liability. In no event may Consultant recover from Client any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the Client's breach of its obligations hereunder or suspension or termination of this Agreement.

16) Project Representative. Each party shall appoint a representative who shall coordinate with the other party on all matters related to the performance of the Services and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

17) This Agreement may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

18) Any forbearance or delay on the part of Client in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

19) Consultant may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of Client, which consent may be withheld for any reason.

20) This Agreement is made only for the benefit of the parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

21) Consultant is an independent contractor of Client. This Agreement does not create any partnership, joint venture or principal-agent relationship between the parties. Further, Client retains no control or authority with respect to its means and methods in which Consultant (or any of its employees or representatives) performs their work or Services.

22) Immigration Law Compliance. Consultant represents and warrants to Client that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act"); (ii) it has enrolled or will enroll in the E-Verify program prior to performing any Services on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Consultant shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Consultant further represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Consultant is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

23) Amendment. Neither this Agreement nor any of the provisions herein may be amended or modified except in accordance with the terms of a subsequent written instrument that is signed by both parties.

24) This instrument sets forth the entire understanding between the parties concerning the matters herein, and, unless expressed herein, all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are of no effect and are deemed to have merged herein.

25) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

(Signature Page Follows)

Whereas, the undersigned, duly authorized representatives of the parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

CITY OF MOUNTAIN BROOK, ALABAMA (CLIENT)

By: _____
Stewart H. Welch III

Its: Mayor

Date: _____

SCHOEL ENGINEERING COMPANY, INC. (CONSULTANT)

By: Wals All III
Walter Schoel III

Its: CEO

Date: December 07, 2023

Below please print or type the following information for the individual to whom invoices for payment should be sent, and enter the names of the respective Project Representatives.

Company: _____

Client: _____

Street Address: _____

City, State, Zip: _____

Phone Number: _____ **Fax Number:** _____

Email Address: _____

Client's Project Number: _____ **Client's Purchase Order Number:** _____

Consultant's Project Representative: _____

Client's Project Representative: _____

RESOLUTION NO. 2023-200

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that either the Mayor or the City Manager of the City is hereby authorized and directed, for and on behalf of the City, to execute a contractor agreement, in the form as attached hereto as Exhibit A, between the City and AR Construction LLC with respect to the Public Works Equipment Shed.

ADOPTED: This 11th day of December, 2023.

Council President

APPROVED: This 11th day of December, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk



City of
Mountain Brook

Heather Richards <richardsh@mtnbrook.org>

2023 PW Equipment Building Project

1 message

James Gay <gayj@mtnbrook.org>

Fri, Dec 8, 2023 at 9:33 AM

To: Heather Richards <richardsh@mtnbrook.org>

The attached drawings to the AR Constructions quote is what was sent to all contractors. This gives everyone the specs and details that would be needed to quote this project. Below are items that are not covered in the drawings. Most of which is on the list page of the contract.

City will take care of these items:

1. Permit fee will be waived. Still will need to be licensed and bonded in Mountain Brook for this project.
2. The drawing that I sent will satisfy. No rendering needed otherwise.
3. Prep for the site will be done by Mountain Brook. To include digging out, materials to be disposed of on site or hauled off, at least a 4" depth #57 stone base for slab.
4. City will supply concrete and set forms.

CONTRACTOR AGREEMENT

AR Construction LLC. ("Contractor") enters this Contractor Agreement ("Agreement") with the **City of Mountain Brook, Alabama**, a municipal corporation ("City"), effective as of the date last executed by a party below (the "Effective Date"). Contractor and City may be individually referenced herein as "Party" or collectively as "Parties."

1. **Project.** Unless otherwise stated on the attached Exhibit A - Specifications (which is incorporated by reference), Contractor, at its expense, will furnish all the labor, materials, supplies, supervision, and equipment needed to perform the work, services and operations (collectively, the "Work") on the understated project (the Project")

Name of Project: Public Works Equipment Shed

Site of Project: 3579 East Street
Mountain Brook, AL 35243

2. **Scope of Work.** See Exhibit A (which includes the City Scope of Work and November 21, 2023 Contractor Proposal, hereinafter the "Contractor Proposal") that is attached and incorporated herein.

3. **Undertaking of Parties.** Contractor agrees to perform the Work in accordance with the terms, conditions and specification in this Agreement and on Exhibit A. City agrees to compensate Contractor and perform its other responsibilities set forth in the Contract Documents.

4. **Term/Termination.** The term of this Agreement shall commence on the Effective Date and thereafter continue in effect for six (6) months (the "Term"). The period in which Contractor will complete the Project is set forth on Exhibit A.

Notwithstanding the provision immediately above or any other language herein, City may terminate this Agreement before the expiration of its Term at the time designated in a written notice to Contractor if each of the following have occurred: (a) Contractor has defaulted on a material obligation to the City hereunder (a "Default"); and (b) following the City's provision of written notice of Default to Contractor, the Contractor fails to correct or remedy that Default within fifteen (15) days after receipt of that notice. The failure of the Contractor to timely perform the Work shall be considered an event of Default. This remedy is in addition to any other provided in the Agreement or available to City under law or in equity.

Contractor's obligations herein shall survive the termination or expiration of the Term for these periods: Section 6(f) (Warranty on workmanship and materials) for one year following Project acceptance; other warranties in Section 6 for a period of one year, and Section 7(c) (Indemnification) for a period of two (2) years.

5. Contract Price/Invoice/Certification. Unless otherwise stated in the Special Conditions on Exhibit A or agreed in a writing signed by the parties, City will pay Contractor the lump sum amount of forty-three thousand one hundred & fifty dollars (\$43,150.00) as compensation for performing the Work (the "Contract Price"). Unless agreed in a writing signed by duly authorized representatives of both parties, the total amount payable to the Contractor for the Work shall not exceed the Contract Price (and agreed sum(s) payable for any Additional Operations contemplated on Exhibit A). In no event will the total amount paid to Contractor for its Work (including the Contract Price or any amount paid for Additional Operations) exceed \$100,000.00.

The City will pay the Contract Price on this Project on the following schedule:

- (a) The balance of the Contract Price after the following certification of completion of Work.

Within ten (10) days following the successful completion of the Project, Contractor will submit to City Project Representative an invoice for the Contract Price (as adjusted by any mutually agreed change orders signed by both parties). With such invoice Contractor shall submit records reasonably supporting its payment. Within five (5) days following receipt of that invoice, City Project Representative will review same, consult with Contractor and make any mutually agreed modifications to it, certify that the invoice is due to be paid, and forward that certified invoice to the City Clerk. The City Clerk will remit to the Contractor the amount certified for payment within twenty (20) days after it receives that certification.

6. Warranties of Contractor. The Contractor warrants each of the following with respect to its Work:

- (a) that it expeditiously will perform its Work in a good and workmanlike manner that is consistent with level of skill and care that would be provided by other contractors performing operations under the same or similar conditions, and in accordance with the Project schedule;
- (b) that it, and all of its employees or any subcontractors (if authorized), will complete the Work in compliance with all codes, laws and regulations that are applicable to the Project;
- (c) that before commencing the Work, at its own expense, the Contractor will obtain all licenses, permits or other governmental authorizations needed to complete the Project, including without limitation, a business license and building permit issued by the City (collectively, "Licensing"). Contractor further agrees to maintain that Licensing throughout the performance of the Project;
- (d) that it has inspected the Site and any other locations at which it will perform the Work, and, based on that inspection and its expertise, that

it has determined that each of those locations is reasonably suitable for Contractor to complete the Work;

- (e) that the Contractor shall be responsible to remove and properly dispose of any debris related to its completion of the Project, and that it will leave each location where the Work is performed in reasonably clean condition;
- (f) that the Work will be free of any material defects in workmanship and materials for a period of one (1) year that shall commence on the date of acceptance of the Project; and
- (g) that all actions required to be taken by or on behalf of the Contractor to enter or execute this Agreement, and to perform its obligations and agreements hereunder, have been duly taken, and the person signing below on behalf of Contractor is authorized to execute this Agreement.

7. Insurance/Safety/Indemnification.

(a) Insurance. For the duration of this Agreement and for limits not less than stated below, Contractor, at its sole expense, shall maintain the following insurance with a company(ies) lawfully authorized to do business in Alabama and reasonably acceptable to City:

(i) Comprehensive General Liability: Seven Hundred Fifty Thousand Dollars (\$750,000.00), combined single limit and aggregate for bodily injury and property damage. This Comprehensive General Liability policy shall include coverage for premises/operations, products/completed operations, assumed contractual obligations, independent contractors, and broad form property damage;

(ii) Automobile Liability: Automobile Liability covering owned and rented vehicles operated with policy limits of not less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) combined single limit and aggregate for bodily injury and property damage;

(iii) Workers Compensation/Employer's Liability: Workers' Compensation as required by statute and Employer's Liability with limits of Five Hundred Thousand Dollars (\$500,000) per occurrence.

The Contractor may satisfy its insurance obligations hereunder through a combination of primary, umbrella and excess policies. Before the execution of this Agreement, the Contractor shall provide City a certificate(s) of insurance evidencing compliance with the requirements in this section. The certificate shall name City as an additional insured on the Comprehensive General Liability, Automobile Liability, and any applicable umbrella and excess policies.

The City will not furnish any type, form, coverage or amount of insurance in connection with the Project.

(b). Safety. Contractor agrees that it (a) has the sole responsibility to identify any condition or hazard at the Site or other locations on City property that will prevent it from safely performing the Work, and (b) is exclusively responsible for performing the Work in a safe manner that does not put at risk the safety of persons or endanger property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (i) its employees and all other persons who may be affected by the Work; (ii) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, or under the care, custody or control of the Contractor or any of its representatives; and (iii) other property at the Work Site or adjacent thereto.

(c). Indemnification. Contractor agrees to defend, indemnify, and hold harmless City and its agents, employees and officials (hereinafter collectively, the "Indemnitees") from and against all demands, actions, liabilities, expenses (including reasonable attorney's fees) or claims for damages by any third parties (including any employee, subcontractor or representative of the Contractor, hereafter a "Contractor Representative") that arise out of, relate to or are caused by any negligent act, omission or conduct by Contractor or any Contractor Representative in performing or failing to perform the Work or its (or their) responsibilities under this Agreement; provided that nothing herein shall obligate the Contractor to indemnify any of the Indemnitees for any claims resulting from the negligent conduct or the willful misconduct of the Indemnitees.

The City will not indemnify Contractor (or nay of its representatives or authorized subcontractors) for any claims that relate to or arise out of the Project.

(d). Limitation of Liability. In no event may Contractor recover from the City any special, incidental, consequential or any other indirect damages whatsoever of any description (including, without limitation, damages for lost profits, lost advantage, lost opportunity, loss of savings or revenues or for increased cost of operations) or amount arising from the City's breach of its obligations hereunder.

8. Project Representative. Each Party shall appoint and indicate on Exhibit A its representative who shall coordinate with the other Party on all matters related to the performance of the Work and the administration of this Agreement (the "Project Representative"). Any notice required hereunder shall be sufficiently given when sent to the appropriate Project Representative via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to the party to be in receipt thereof.

9. Miscellaneous Provisions.

a. This Agreement which is comprised of this instrument, the City Scope of Work and the November 21, 2023 Contractor Proposal (collectively, the "Contract Documents") sets forth the entire understanding between the Parties concerning the matters herein, and all oral representations, prior negotiations, understandings, agreements, conditions, and terms discussed between them prior to acceptance and signing of this Agreement are deemed to have merged herein. In the event of any conflict or inconsistency between provisions in the various Contract Documents, the provision(s) in the document in the order below shall control and take precedence: (1) this Agreement; (2) the City Scope of Work; and (3) the Contractor Proposal.

b. This Agreement may be executed in counterparts each of which when executed by the Parties shall be deemed to be a complete original. An electronic or facsimile copy of the executed contract or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.

c. Any forbearance or delay on the part of City in enforcing any of its rights under this Agreement shall not be construed as a waiver of such rights. No terms of this Agreement shall be waived unless expressly waived in writing.

d. Contractor may not assign its rights, obligations or the benefits of this Agreement to any third party without the written consent of City, which consent may be withheld for any reason.

e. This Agreement is made only for the benefit of the Parties. It is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

f. Contractor is an independent contractor of City. This Agreement does not create any partnership, joint venture or principal-agent relationship between the Parties. Further, City retains no control or authority with respect to its means and methods in which Contractor (or any of its employees or representatives) performs the Work.

h. Immigration Law Compliance. Contractor represents and warrants to the City that: (i) it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act"); (ii) it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that it is enrolled in the E-Verify program. During the performance of this Agreement, the Contractor shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations; (iii) it will comply with all applicable provisions of the Act with respect to subcontractors, if any, that it engages on the Project by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work on the Project in Alabama that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Contractor further represents and

warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act; and (iv) by signing this Agreement, it affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if Contractor is found to be in violation of this provision, it shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

i. Amendment. Neither this Agreement nor any of the provisions herein (including, without limitation, those concerning the Scope, Project Schedule and Contract Price) may be amended or modified except in accordance with the terms of a written instrument (or change order) signed by both Parties.

j. Delayed Performance/Force Majeure Events. Neither Party shall be liable to the other for any failure to perform its respective obligations (including payment obligations) under this Agreement during any period in which its performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure Event"). However, the delayed Party must promptly provide the other with written notice of the Force Majeure Event, the delayed Party's time for performance will be excused only for the duration of that Event, and, if that Event lasts longer than 30 days, then the other Party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed Party.

k. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

(Signature Page Follows)

Whereas, the undersigned, duly authorized representatives of the Parties execute this Agreement on behalf of their respective organization on the date(s) shown below.

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Its: Mayor

Date: _____

AR Construction LLC. CONTRACTOR.

By: _____

Its: _____

Date: _____

EXHIBIT A – SPECIFICATIONS

1. Scope of Work. 20' wide 75' long height 16'.2" high side & 14'.6" low side Metal Structure Roof 26 Gauge Galvalume R Panels All Walls Open Simple Trim Anchor Bolts Set and Concrete Finish Work By Contractor

See attached City Scope of Work and November 21, 2023 Contractor Proposal.

If Contractor desires or is required to perform services on the Project that fall outside the Scope ("Additional Operations"), the Contractor shall advise the City Project Representative of the need for Additional Operations before undertaking those services, the parties shall reach agreement on the expense of any Additional Operations and the City Project Representative shall approve any such Additional Operations before the Contractor performs same. No compensation for Additional Operations will be paid unless those Operations are approved in advance.

2. Project Schedule. Weather permitting, Contractor expects to complete the Work within an approximate 10 week period after execution of the Agreement and the City provides it a Notice to Proceed.

3. Project Representatives.

City Project Representative:
James Gay
3579 East Street
Birmingham, AL 35243
Email: gayj@mtnbrook.org
Day Tel #: 205-802-3870

Contractor Project Representative:
John Looney
3819 Canaan Drive
Bessemer, Al 35022
Email: arconstructionllc@yahoo.com
Day Tel #: 205-453-2261

4. Special Conditions. Permit fee will be waived. Site preparation will be done By Mountain Brook Public Works. Forms will be set and and Concrete supplied by City.

A R CONSTRUCTION LLC.

**3819 CANAAN Dr. SE
BESSEMER, ALABAMA 35022**

CONTRACT

We will supply metal shed as follows 11-08-2023

20' wide

75' long

16'2" high side 14'6" low side

Roof only 26 gauge galvalume R panels

All walls opens simple trim

We will pour and set anchor bolts and finish slab

We will supply license and bond

****** mountain brook to form up pad and supply concrete**

Total price material and labor \$43,150.00 to be paid in full upon completion

Accepted by _____ Date _____





City of Mountain Brook
56 Church Street
Mountain Brook, Alabama 35213
Bond No. S040973

KNOW ALL MEN BY THESE PRESENTS that we, John Looney dba A&R Construction LLC ("Principal") and Employers Mutual Casualty Company ("Surety") are held and firmly bound unto the City of Mountain Brook, an Alabama municipal corporation ("City") in the penal sum of ten thousand dollars (\$10,000.00), for the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal desires to engage in the following business in the City of Mountain Brook, and is providing this bond as required by the Building Code and the municipal ordinances of the City:

- ☐ Plumber/Gas Fitter ☐ Excavation Contractor ☐ Sewer and Septic Tank Contractor ☐ Electrician
☒ Building Contractor ☐ Paving Contractor ☐ Sprinkler System Contractor

(CHECK ONLY ONE CONTRACTORS ENGAGED IN MORE THAN ONE BUSINESS WILL NEED BOND FOR EACH)

The condition of the above obligation is such that, if the Principal shall faithfully observe all ordinances and laws of the City pertaining to said business or businesses, whether now or hereafter enacted, together with all rules and regulations established under the authority of said laws or ordinances, and shall perform in a workmanlike manner all work undertaken by the Principal in the prosecution of said business or businesses, and shall indemnify and save harmless the City from all liability occasioned or arising from acts done or omitted by the Principal, its servants and agents, in doing said work, or from any unlawful or inadequate work, and shall adequately safeguard all ditches and excavations which may be opened by the Principal in the streets of the City, and shall restore, or cause to be restored, in a workmanlike manner, to their former condition, all such portions of said streets excavated by the Principal, and pay the expenses thereof, and shall maintain said restored portions in a safe condition for the period of one year from the date of the restoration of such excavation, and shall defend all suits brought against the City based, in whole or in part, upon any act or default for which the Principal is responsible, and pay the costs and expenses thereof, and shall pay all such damages as any person, firm or corporation may sustain by reason of violation of said laws, ordinances, rules or regulations by the Principal, its servants and agents, or by reason of the negligence of the Principal, its servants or agents, in the prosecution of said business or businesses; then this bond to be void, otherwise to remain in full force and effect.

Any person, firm or corporation injured in person or property by reason of any violation of said laws, ordinances, rules or regulations by the Principal, or by any act, default or omission constituting a breach of any of the conditions of this bond, may maintain a suit or action hereon for such injury.

This bond shall remain in full force and effect until thirty (30) days after receipt by the City Clerk of the City of written notice of the Surety's intent to cancel this bond. Except with respect to liability accruing prior to the effective date of the cancellation of this bond, the Surety's liability hereunder shall terminate thirty (30) days after receipt by the City Clerk of such written notice.

IN WITNESS WHEREOF, the Principal and Surety have hereunder set their hands and seals at Montgomery, Alabama, on this the 8 day of November, 2023.

Contractor/Principal:

John Looney dba A&R Construction LLC

(Please type or print clearly)

By: _____
(Signature of Contractor/Principal) (Title)

Address: 3819 Canaan Dr.

Bessemer, AL 35022

Phone: _____

Surety:

Employers Mutual Casualty Company

By: [Signature]
(Please type or print clearly)
(Signature of Surety or Attorney-in-fact) (Title)

Address: P.O. Box 712

Des Moines, IA 50306-0712

Phone: 205-987-1407

Received and approved on this _____ day of _____

City of Mountain Brook, Alabama

By: _____
City Clerk

[Attach Power of Attorney]

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, that:

1. Employers Mutual Casualty Company, an Iowa Corporation
2. EMCASCO Insurance Company, an Iowa Corporation
3. Union Insurance Company of Providence, an Iowa Corporation

4. Illinois EMCASCO Insurance Company, an Iowa Corporation
5. Dakota Fire Insurance Company, a North Dakota Corporation
6. EMC Property & Casualty Company, an Iowa Corporation

hereinafter referred to severally as "Company" and collectively as "Companies", each does, by these presents, make, constitute and appoint:

LaKesha Taylor

its true and lawful attorney-in-fact, with full power and authority conferred to sign, seal, and execute the following Surety Bond(s):

Surety Bond **Principal:**
Number John Looney dba A&R
 Construction LLC

S040973

Obligee:
City of Mountain Brook

and to bind each Company thereby as fully and to the same extent as if such instruments were signed by the duly authorized officers of each such Company, and all of the acts of said attorney pursuant to the authority hereby given are hereby ratified and confirmed.

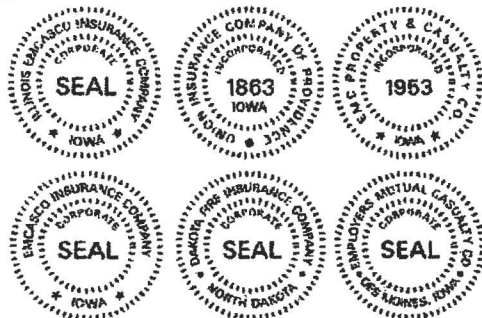
AUTHORITY FOR POWER OF ATTORNEY

This Power-of-Attorney is made and executed pursuant to and by the authority of the following resolution of the Boards of Directors of each of the Companies at the first regularly scheduled meeting of each company duly called and held in 1999:

RESOLVED: The President and Chief Executive Officer, any Vice President, the Treasurer and the Secretary of Employers Mutual Casualty Company shall have power and authority to (1) appoint attorneys-in-fact and authorize them to execute on behalf of each Company and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof; and (2) to remove any such attorney-in-fact at any time and revoke the power and authority given to him or her. Attorneys-in-fact shall have power and authority, subject to the terms and limitations of the power-of-attorney issued to them, to execute and deliver on behalf of the Company, and to attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and any such instrument executed by any such attorney-in-fact shall be fully and in all respects binding upon the Company. Certification as to the validity of any power-of-attorney authorized herein made by an officer of Employers Mutual Casualty Company shall be fully and in all respects binding upon this Company. The facsimile or mechanically reproduced signature of such officer, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power-of-attorney of the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS THEREOF, the Companies have caused these presents to be signed for each by their officers as shown, and the Corporate seals to be hereto affixed this 22nd day of September, 2022.

Seals



Scott R. Jean
Scott R. Jean, President & CEO
of Company 1; Chairman, President
& CEO of Companies 2, 3, 4, 5 & 6

Todd Strother
Todd Strother, Executive Vice President
Chief Legal Officer & Secretary of
Companies 1, 2, 3, 4, 5 & 6

On this 22nd day of September, 2022 before me a Notary Public in and for the State of Iowa, personally appeared Scott R. Jean and Todd Strother, who, being by me duly sworn, did say that they are, and are known to me to be the CEO, Chairman, President, Executive Vice President, Chief Legal Officer and/or Secretary, respectively, of each of the Companies above; that the seals affixed to this instrument are the seals of said corporations; that said instrument was signed and sealed on behalf of each of the Companies by authority of their respective Boards of Directors; and that the said Scott R. Jean and Todd Strother, as such officers, acknowledged the execution of said instrument to be their voluntary act and deed, and the voluntary act and deed of each of the Companies.

My Commission Expires October 10, 2025.

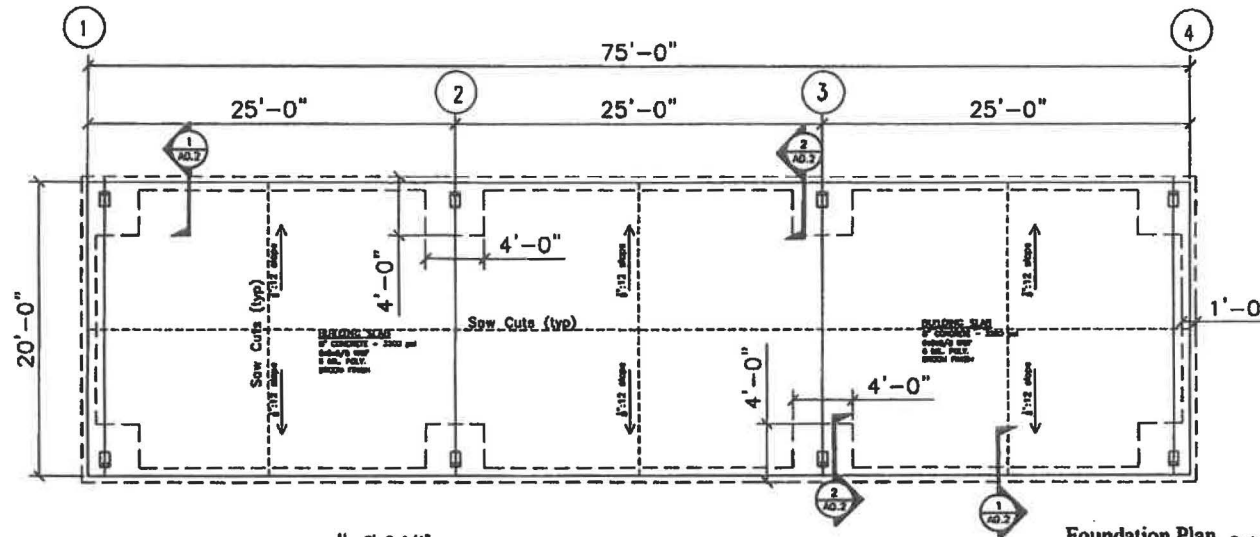
Kathy Loveridge
Notary Public in and for the State of Iowa

CERTIFICATE

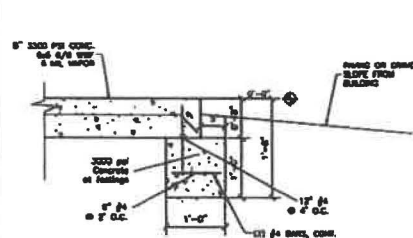
I, Ryan J. Springer, Vice President of the Companies, do hereby certify that the foregoing resolution of the Boards of Directors by each of the Companies, and this Power of Attorney issued pursuant thereto on 22nd day of September, 2022, are true and correct and are still in full force and effect.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 8th day of November, 2023.

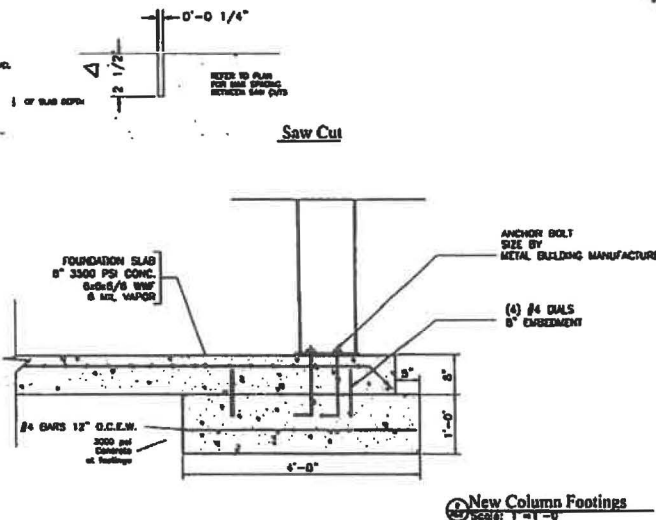
Ryan J. Springer
Vice President



Foundation Plan Scale: 1"=1'-0"
Note: Work This Drawing w/ Metal Building Manufacturer Anchor Bolt Drawings



New Column Footings
 Scale: 1"=1'-0"



New Column Footings
 Scale: 1"=1'-0"

ANCHOR BOLT DETAIL	BAR	LENGTH	SPACING	FROM	TO
	1/2"	1'-0"	1'	2"	2"
	3/8"	1'-0"	1'	2"	2"
	3/4"	1'-0"	1'	2"	2"
	1"	1'-0"	1'	2"	2"
	1 1/2"	1'-0"	1'	2"	2"

* NEW ACES OF REINFORCEMENT OF NEW BAR BE ADDED TO ANCHOR BOLT PROTECTION FOR NEW, FROM PROTECTION

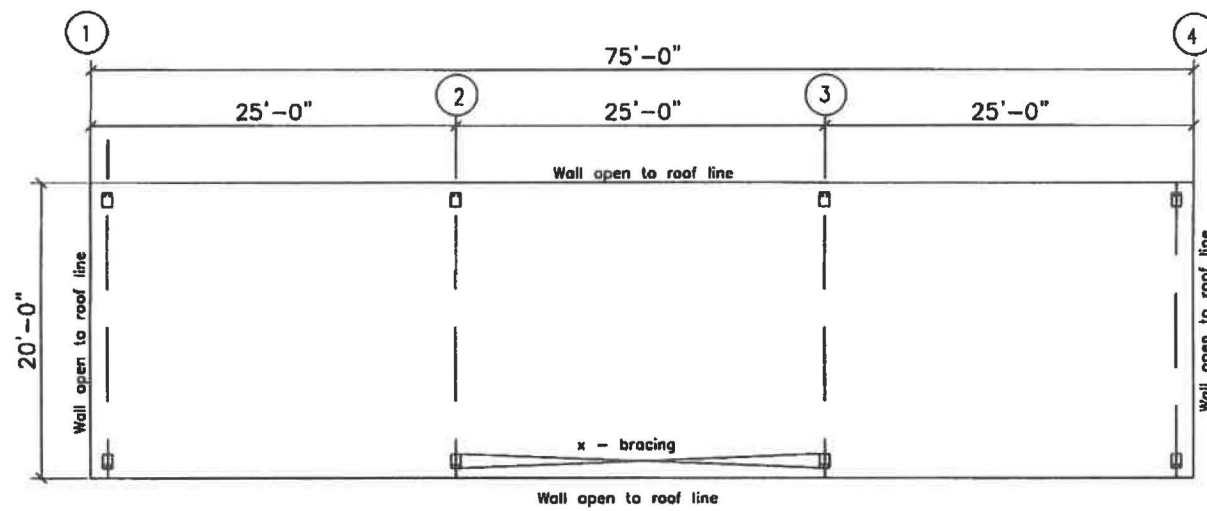
* OTHER ANCHOR BOLTS ARE ALIGNED AT CONNECTION OPTION

General Structural Notes

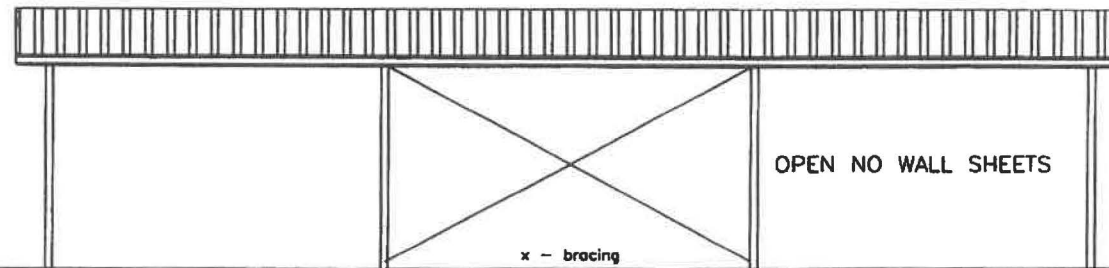
- DESIGN IN ACCORDANCE WITH THE INTERNATIONAL BUILDING CODE, 2015 EDITION.
- DESIGNED LOADS ARE AS FOLLOWS:

WIND LOAD	115 MPH
ROOF LIVE LOAD	20 PSF
GROUND SNOW LOAD	5.0 PSF
SEISMIC DESIGN	$S_s = 0.294$ $S_1 = 0.095$
SEISMIC DESIGN CATEGORY	B
	SITE CLASS D
- MATERIALS ARE TO BE AS FOLLOWS:

CONCRETE	$f'_c = 3000$ PSI AT 28 DAYS
REINFORCEMENT	$f_y =$ GRADE 60
- HORIZONTAL REINFORCEMENT IN SLAB TURNDOVNS AND FOOTINGS SHALL BE CONTINUOUS.
- SLAB CONTROL JOINTS TO BE PLACED WITHIN 24 HOURS OF SLAB PLACEMENT.
- CONTRACTOR SHALL VERIFY ASSUMED SOILS BEARING OF 2000 PSI.
- CONTRACTOR SHALL VERIFY ASSUMED $10 < P_1 < 20$, $LL < 35$ AND $PVR < 1.0$ INCH

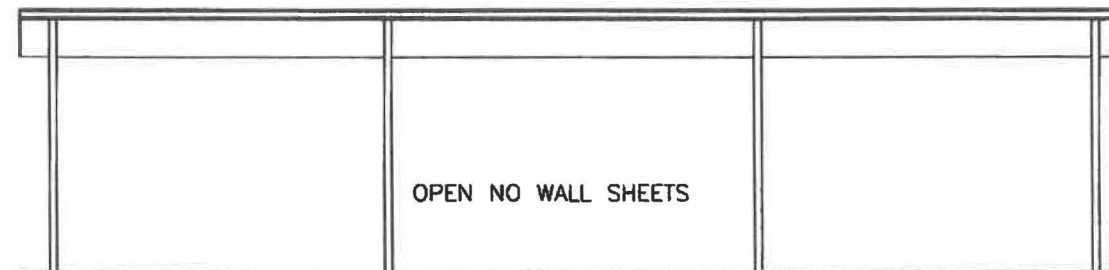


Floor Plan
Scale: 1"=1'-0"



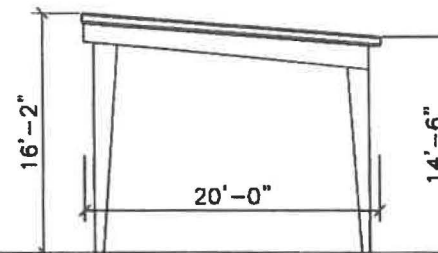
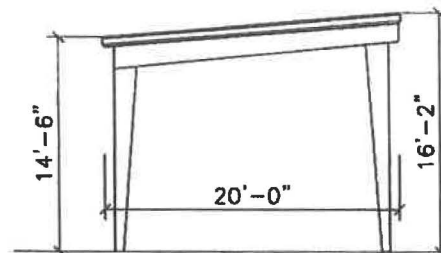
75'-0"

Low Side Wall Elevation
Scale: 1"=1'-0"



75'-0"

High Side Wall Elevation
Scale: 1"=1'-0"



End Wall Elevation
Scale: 1"=1'-0"

RESOLUTION NO. 2023-201

**A RESOLUTION AUTHORIZING THE SALE OR DISPOSAL
OF CERTAIN SURPLUS PROPERTY**

WHEREAS, the City of Mountain Brook, Alabama, has certain items of personal property which are no longer needed for public or municipal purposes; and

WHEREAS, Section 11-43-56 of the Alabama Code of 1975 authorizes the municipal governing body to dispose of unneeded personal property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain Brook, as follows:

Section 1. It is hereby established and declared that the following property, as described in the form as attached hereto as Exhibit A, owned by the City of Mountain Brook, Alabama are no longer needed for public or municipal purposes and is hereby declared surplus property; and

Section 2. That the City Manager, or his designated representative, is hereby authorized and directed to sell said property by way of public Internet auction or to dispose of said items not sold.

ADOPTED: This 11th day of December, 2023.

Council President

APPROVED: This 11th day of December, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk

Description	Qty.	Asset Number (Year-Ledger-Item #)
5-Drawer Filing Cabinet; Metal; Black	6	2007-441-3590-6730-3505-008
U-Shaped Desk with Hutch	1	2007-441-3590-6730-3505-006
2-Drawer Wooden Filing Cabinet	1	2007-441-3590-6730-3505-007
Burgandy Leather Waiting Room Chair	1	2007-441-3590-6730-3505-005
Wooden Desk	1	2007-441-3590-6730-3505-002
Cabinet with Hutch	1	2007-441-3590-6730-3505-003
Wooden Desk	1	2007-441-3590-6730-3505-001
Wooden Bookcase	1	2007-441-3590-6730-3505-004
Wooden Meeting Table	1	2007-441-3590-6730-3505-009

RESOLUTION NO. 2023-202

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the O'Neal Library Director, Lindsay Gardner is hereby authorized and directed, for and on behalf of the City, to execute an elevator Service and Repair Order, in the form as attached hereto as Exhibit A, between O'Neal Library and Otis Elevator Company with respect to elevator repairs.

ADOPTED: This 11th day of December, 2023.

Council President

APPROVED: This 11th day of December, 2023.

Mayor

CERTIFICATION

I, Heather Richards, City Clerk of the City of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on December 11, 2023, as same appears in the minutes of record of said meeting.

City Clerk

Otis Service and Repair Order

5/19/2023

CUSTOMER NAME

Emmet O Neal Library
50 Oak Street
Birmingham, AL 35213

OTIS ELEVATOR COMPANY

2194 PARKWAY LAKE DR, STE B
BIRMINGHAM, AL 35244

OTIS CONTACT

Kathleen Scerra
Phone:
Email: Kathleen.Scerra@otis.com

PROJECT LOCATION

EMMETT O'NEAL LIBRARY
50 OAK STREET
MOUNTAIN BROOK, AL 35223

PROPOSAL NUMBER

QTE-001660411

We propose to furnish the necessary material and labor on the following units:

Unit	Customer Designation
460263	ELV 1,871-2659

SCOPE OF WORK**ELEVATOR REPAIR - WATER DAMAGE**

Otis will provide parts and labor necessary to replace the following components tude to water damage.

Rollers and Upthrust
Locks
Relating equipment
Oil change
Packing
211 hydro enhance
Door operator

This proposal does not cover future repair or replacement to unseen items that experienced exposure to water damage.

NOTE: With water damage many problems are not visible and they are known to create many unforeseen problems over a period of time that is past the actual occurrence date. Please be aware we will bring these items to your attention and we will send you an additional proposal for any repairs relating to the damage for this occurrence, in addition to the originating service call.

You understand and agree that payment for our services shall not be predicated, contingent, conditioned upon, or otherwise related to any reimbursement from any insurance company or any other third party.

Material provided shall be installed in accordance with the ASME A17.1 Safety Code for Elevators and Escalators.

The customer will be responsible for paying local inspection fees if applicable.

A representative will contact you to schedule the work. All work will be performed during regular working days and hours of the Elevator Trade unless otherwise specified above.

PRICE

\$54,860.00

Fifty-four thousand eight hundred sixty dollars

This price is based on a one hundred percent (100%) downpayment in the amount of \$54,860.00

Payment terms:

- The base proposal price is contingent upon receiving a downpayment of one hundred percent (100%) of the base contract amount.
- The downpayment amount is due in full prior to Otis ordering material and/or mobilizing.
- If you choose the alternative downpayment amount listed below, the corresponding add shall be applied to the base contract amount.

Downpayment Amount	Price Adjustment Percentage	Authorization (Initial)
50%	+10%	

In the event 100% of the contract price is not paid up front, we must be paid the remaining balance no later than the completion of work. Final invoice will be submitted once work is scheduled.

This proposal, including the provisions printed on the pages following, shall be a binding contract between you, or the party identified below for whom you are authorized to contract (collectively referred to herein as "you"), and us when accepted by you through execution of this proposal by you and approved by our authorized representative; or by your authorizing us to perform work for the project and our commencing such work.

Accepted in Duplicate

Emmet O Neal Library

Otis Elevator Company

Date: _____

Date: _____

Signed: _____

Signed: _____

Print Name: _____

Print Name: Anthony Vittorio

Title: _____

Title: Regional Field Operations Manager -

Email: _____

New Equipment

Email: anthony.vittorio@otis.com

Company Name: Emmet O Neal Library

☐ Principal, Owner or Authorized Representative of
Principal or Owner

☐ Agent _____
(Name of Principal or Owner)

TERMS AND CONDITIONS

1. This quotation is subject to change or withdrawal by us prior to acceptance by you.
2. The work shall be performed for the agreed price plus any applicable sales, excise or similar taxes as required by law. In addition to the agreed price, you shall pay to us any future applicable tax imposed on us, our suppliers or you in connection with the performance of the work described.
3. Payments shall be made as follows: A down payment of One Hundred percent (100.0%) of the price shall be paid by you upon your signing of this document. Full payment shall be made on completion if the work is completed within a thirty days period. If the work is not completed within a thirty day period, monthly progress payments shall be made based on the value of any equipment ready or delivered. We reserve the right to discontinue our work at any time until payments shall have been made as agreed and we have assurance satisfactory to us that subsequent payments will be made when due. Payments not received within thirty (30) days of the date of invoice shall be subject to interest accrued at the rate of eighteen percent (18%) per annum or at the maximum rate allowed by applicable law, whichever is less. We shall also be entitled to reimbursement from you of the expenses, including attorney's fees, incurred in collecting any overdue payments.
4. Our performance is conditioned upon your securing any required governmental approvals for the installation of any equipment provided hereunder and your providing our workmen with a safe place in which to work. Additionally, you agree to notify us if you are aware or become aware prior to the completion of the work of the existence of asbestos or other hazardous material in any elevator hoistway, machine room, hallway or other place in the building where Otis personnel are or may be required to perform their work. In the event it should become necessary to abate, encapsulate or remove asbestos or other hazardous materials from the building, you agree to be responsible for such abatement, encapsulation or removal, and in such event Otis shall be entitled to delay its work until it is determined to our satisfaction that no hazard exists and compensation for delays encountered if such delay is more than sixty (60) days. In any event, we reserve the right to discontinue our work in the building whenever in our opinion this provision is being violated.
5. Unless otherwise agreed in writing, it is understood that the work shall be performed during our regular working hours of our regular working days. If overtime work is mutually agreed upon and performed, an additional charge therefore, at our usual rates for such work, shall be added to the contract price. The performance of our work hereunder is conditioned on your performing the preparatory work and supplying the necessary data specified on the front of this proposal or in the attached specification, if any. Should we be required to make an unscheduled return to your site to begin or complete the work due to your request, acts or omissions, then such return visits shall be subject to additional charges at our then current labor rates.
6. Title to any material to be furnished hereunder shall pass to you when final payment for such material is received. In addition, we shall retain a security interest in all material furnished hereunder and not paid for in full. You agree that a copy of this Agreement may be used as a financing statement for the purpose of placing upon public record our interest in any material furnished hereunder, and you agree to execute a UCC -1 form or any other document reasonably requested by us for that purpose.
7. Except insofar as your equipment may be covered by an Otis maintenance or service contract, it is agreed that we will make no examination of your equipment other than that necessary to do the work described in this contract and assume no responsibility for any part of your equipment except that upon which work has been done under this contract.
8. Otis shall not be liable for any loss, damage or delay due to any cause beyond our reasonable control including, but not limited to, acts of government, strikes, lockouts, other labor disputes, fire, explosion, theft, floods, water damage, weather damage, extreme weather, traffic conditions, epidemic, pandemic, quarantine (including Covid-19), sabotage, cyber security, national emergency, act of terrorism, earthquake, riot, civil commotion, war or insurrection, vandalism, misuse, abuse, mischief, or acts of God or nature.
9. We warrant that all services furnished will be performed in a workmanlike manner. We also warrant that any equipment provided hereunder shall be free from defects in workmanship and material. Our sole responsibility under this warranty shall be at our option to correct any defective services and to either repair or replace any component of the equipment found to be defective in workmanship or material provided that written notice of such defects shall have been given to us by you within ninety (90) days after completion of the work or such longer period as may be indicated on the front of this form. All defective parts that are removed and replaced by us shall become our property. We do not agree under this warranty to bear the cost of repairs or replacements due to vandalism, abuse, misuse, neglect, normal wear and tear, modifications not performed by us, improper or insufficient maintenance by others, or any causes beyond our control. We shall conduct, at our own expense, the entire defense of any claim, suit or action alleging that, without further combination, the use by you of any equipment provided hereunder directly infringes any patent, but only on the conditions that (a) we receive prompt written notice of such claim, suit or action and full opportunity and authority to assume the sole defense thereof, including settlement and appeals, and all information available to you for such defense; (b) said equipment is made according to a specification or design furnished by us; and (c) the claim, suit or action is brought against you. Provided all of the foregoing conditions have been met, we shall, at our own expense, either settle said claim, suit or action or shall pay all damages excluding consequential damages and costs awarded by the court therein and, if the use or resale of such equipment is finally enjoined, we shall, at our option, (i) procure for you the right to use the equipment, (ii) replace the equipment with equivalent noninfringing equipment, (iii) modify the equipment so it becomes noninfringing but equivalent, or (iv) remove the equipment and refund the purchase price (if any) less a reasonable allowance for use, damage and obsolescence.
THE EXPRESS WARRANTIES SET FORTH HEREIN ARE THE EXCLUSIVE WARRANTIES GIVEN; WE MAKE NO OTHER WARRANTIES EXPRESS OR IMPLIED, AND SPECIFICALLY MAKE NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE; AND THE EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE ARE IN LIEU OF ANY SUCH WARRANTIES AND ANY OTHER OBLIGATION OR LIABILITY ON OUR PART.
10. Under no circumstances shall either party be liable for special, indirect, liquidated, or consequential damages in contract, tort, including negligence, warranty or otherwise, notwithstanding any indemnity provision to the contrary. Notwithstanding any provision in any contract document to the contrary, our acceptance is conditioned on being allowed additional time for the performance of the Work due to delays beyond our reasonable control. Your remedies set forth herein are exclusive and our liability with respect to any contract, or anything done in connection therewith such as performance or breach thereof, or from

the manufacture, sale, delivery, installation, repair or use of any equipment furnished under this contract, whether in contract, in tort (including negligence), in warranty or otherwise, shall not exceed the price for the equipment or services rendered.

12. It is agreed that after completion of our work, you shall be responsible for ensuring that the operation of any equipment being furnished hereunder is periodically inspected. The interval between such inspections shall not be longer than what may be required by the applicable governing safety code. Notwithstanding any other provisions hereof, if any part delivered hereunder incorporates software, the transaction is not a sale of such software; rather, you are hereby granted merely a license to use such software solely for operating the equipment for which such part was ordered. By accepting delivery of such part, you agree not to copy or let others copy such software for any purpose whatsoever, to keep such software in confidence as a trade secret, and not to transfer possession of such part to others except as a part of a transfer of ownership of the equipment in which such part is installed, provided that you inform us in writing about such ownership transfer and the transferee agrees in writing to abide by the above license terms.
13. In furtherance of OSHA's directive contained in 29 C.F.R. § 1910.147(f)(2)(i), which requires that a service provider (an "outside employer") and its customer (an "on-site employer") must inform each other of their respective lock out/tag out ("LOTO") procedures whenever outside servicing personnel are to be engaged in control of hazardous energy activities on the customer's site, Otis incorporates by reference its mechanical LOTO procedures and its electrical LOTO procedures. These procedures can be obtained at www.otis.com by clicking on "Tools & Resources" on the home page, selecting "Lockout Tagout Policy" under the "Safety Information" column and downloading the "Lockout Tagout Policy Otis 6.0" and "Mechanical Energy Policy Otis 7.0," or the then most current version, both of which are in .pdf format. You agree that you will disseminate these procedures throughout your organization to the appropriate personnel who may interact with Otis personnel while Otis personnel are working on site at your facility and will ensure that such personnel comply with these LOTO procedures while Otis personnel are working on site.
14. This Agreement constitutes the entire understanding between the parties regarding the subject matter hereof and may not be modified by any terms on your order form or any other document and supersedes any prior written or oral communication relating to the same subject. Any amendment or modifications to this Agreement shall not be binding upon either party unless agreed to in writing by an authorized representative of each party.
15. This Contract will be deemed voidable, even after execution, if it is determined by Otis that performance of the services and/or engagement in the contractual relationship/transaction will violate, or is otherwise restricted by, any and all laws, regulations and/or orders, including sanctions laws, that are applicable to Otis or otherwise apply to Otis' operations.
16. By accepting delivery of parts incorporating software, you agree that the transaction is not a sale of such software but merely a license to use such software solely for operating the unit(s) for which the part was provided, not to copy or let others copy such software for any purpose whatsoever, to keep such software in confidence as a trade secret, and not to transfer possession of such part to others except as a part of a transfer of ownership of the equipment in which such part is installed, provided that you inform us in writing about such ownership transfer and the transferee agrees in writing to abide by the above license terms prior to any such transfer.